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EXECUTIVE COUNCIL

Thirty-Fourth Ordinary Session

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**REPORT OF THE 4TH ORDINARY SESSION OF THE STC ON
JUSTICE AND LEGAL AFFAIRS, 23-30 NOVEMBER 2018, ADDIS
ABABA, ETHIOPIA**

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**Fourth Ordinary Session of the Specialized Technical Committee on Justice
and Legal Affairs (Ministerial Meeting)**

**30 November 2018,
Addis Ababa, Ethiopia**

**STC/Legal/Min/Report
Original: English**

REPORT

I. INTRODUCTION

1. Pursuant to the Rules of Procedure of the Specialized Technical Committee (STC) on Justice and Legal Affairs, the African Union Commission, in consultation with the Bureau of the STC, convened the Fourth Ministerial Ordinary Session of the STC on Justice and Legal Affairs on 30 November 2019 in Addis Ababa, Ethiopia, to consider various draft legal instruments.
2. The Ministerial Session was preceded and prepared by a meeting of Government Experts held from 23 - 29 November 2018.
3. The STC on Justice and Legal Affairs comprises Ministers of Justice and Attorneys General or Keepers of the Seals, Ministers responsible for Human Rights, Constitutionalism and the Rule of Law or such other Ministers or authorities duly accredited by the Governments of Member States.

II. ATTENDANCE

4. The following forty-one (41) Member States were in attendance:

Algeria, Angola, Benin, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Congo, Egypt, Eritrea, Eswatini, Ethiopia, Gabon, Gambia, Ghana, Guinea, Kenya, Lesotho, Libya, Madagascar, Malawi, Mali, Mauritius, Mauritania, Morocco, Mozambique, Namibia, Nigeria, Rwanda, Sahrawi Arab Democratic Republic (SADR), Senegal, South Africa, South Sudan, Sudan, United Republic of Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe.
5. The meeting was also attended by the following AU Organs: African Court on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child.
6. One Specialized Agency: The APRM was also in attendance.

III. OPENING OF THE MEETING

7. The following statements were delivered during the opening ceremony:

Statement by the Legal Counsel of the African Union Commission

8. Ambassador Dr. Namira Negm, Legal Counsel of the African Union, on behalf of the Chairperson of the Commission, H.E Mr. Moussa Faki Mahamat, welcomed all the Honourable Ministers of Justice, Attorneys General, Ministers in charge of Human Rights and delegations to the Fourth Ordinary Session of the STC on Justice and Legal Affairs. She began by noting that the STC on Justice and Legal Affairs is instrumental in ensuring the harmonization of the norms, guiding principles and shared values of the Union.

9. The Legal Counsel recalled that since its First Ordinary Session in 2014, the STC has considered and endorsed a total of forty three (43) legal instruments, setting out the norms and legal obligations over a broad range of issues, including institutional framework, governance, human rights, peace and security, natural resources and the environment, trade and investment, civil aviation, transport and energy, African culture, health and social protect, among others.
10. She informed the meeting of the work done by the Government Legal Experts in preparation for the Ministerial Session. The Legal Counsel highlighted the instruments that were deliberated by the Experts and that are being recommended for endorsement at the Ministerial Session.
11. Amb. Negm noted that the Government Legal Experts, had, during their session engaged in rigorous debates and negotiations to ensure the following: that the draft legal instruments are in line with the Constitutive Act of the Union, as well as other existing legal instruments; that proposed amendments to legal instruments follow the prescribed procedure as stipulated in the treaties and in line with AU practice; and that the text of draft instruments is harmonized in all the languages.
12. In concluding her statement, the Legal Counsel emphasized the weight of the task ahead, but expressed confidence that the Meeting will be able to finalize the program in a timely and efficient manner. She then thanked the Honourable Ministers and delegations for their presence and wished them fruitful and successful deliberations.

Statement by the Chairperson

13. In his statement, Chairperson, Mr. Lebohang Hlaele, Minister of Law Constitutional Affairs, and Human Rights, from the Kingdom of Lesotho welcomed the Honourable Ministers and all delegations to the Fourth Ordinary Session of the STC.
14. He applauded and congratulated the governments' legal experts, Office of the Legal Counsel and other Staff from the Commission for their dedication, selflessness and sacrifice as displayed in considering, in a meaningful manner, all draft legal instruments and policies.
15. He stated that the consideration of the submitted draft AU legal instruments and policies reflected dedication and solemn commitment towards the full realization of Agenda 2063.
16. The Honorable Chairperson encouraged all delegates to have smooth and visionary deliberations and he invited all delegates to underline with a mutual goal the fact that the draft legal instruments to be considered will contribute significantly to the fulfilment of the objectives of our union as enshrined in the Constitutive Act of the Union.
17. He highlighted the fact that the STC –JLA is challenged by a number of legal instruments and policies aimed at coordination Member States in addressing the challenges faced by the continent, including those related to justice and the rule of law. He commended the remarkable skills of the government experts, the legal counsel and her staff and the

entire commission that carefully considered each and every legal instrument and policy.

18. The Chairperson then introduced the draft agenda, program of work and the draft instruments on the agenda. He also referred to draft agenda items which the experts had recommended their deferral to the 5th Ordinary Session of the STC-JLA. He therefore recommended the convening of the 5th Ordinary Session sometime early next year so as to consider and finalise these important legal instruments.
19. He concluded by officially opening the 4th Ordinary Session of the STC on Justice and Legal Affairs.

IV. CONSIDERATION AND ADOPTION OF THE AGENDA

20. The meeting adopted the following Agenda:

1. Opening Ceremony
2. Consideration and Adoption of the Draft Agenda
3. Organization of Work
4. Consideration of the Draft Report of the Meeting of Government Legal Experts
5. Consideration of the Draft legal instruments:
 - i. *Draft Treaty for the Establishment of the African Medicines Agency;*
 - ii. *Draft African Union Transitional Justice Policy;*
 - iii. *Draft Rules of Procedure of the Specialized Technical Committee on Finance, Monetary Affairs, Economic Planning and Integration;*
 - iv. *Draft Statute of the African Audio Visual and Cinema Commission;*
 - v. *Draft Statutes of the African Union International Centre for Girls' and Women's Education in Africa (AU/CIEFFA);*
 - vi. *Consideration of the Draft Amendment to Article 35 of the Charter for African Cultural Renaissance;*
 - vii. *Draft Proposed Amendment to Article 5(1) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.*
6. Any Other Business.
7. Adoption of the Draft legal instruments and the Draft Report
8. Closing Ceremony

V. CONSIDERATION OF THE DRAFT REPORT OF THE MEETING OF GOVERNMENT LEGAL EXPERTS

21. Ms. Malebona Claudia Takalimane, Chairperson of the meeting of the Government Legal Experts, presented the Report of the meeting that took place from 23 to 29 November 2018. Thereafter the Legal Counsel, highlighted the major conclusions and recommendations, which were being submitted for consideration by the Ministerial Session and highlighted that the experts had reached consensus on all the issues except on the Proposed Amendment to **Article 5(1) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.**

22. After this presentation, the following comments and observations were made:

- a. Necessity for the Ministerial Session to consider each and every instrument on the Agenda.
- b. On the Draft Statute on the establishment of the Pan African Human Rights Institute (PAHRI), reported in paras 112 – 113, the recommendation to the Department of Political Affairs was to consider the exact status of PAHRI (organ, specialized agency or specialised technical institution) and to submit the financial, legal and structural implications to the next Session of the STC.
- c. Reflect accurately the official title and position of the person who presented the report on the draft statute for the African Peer review Mechanism (APRM), as reported in paragraphs 113. The official title is “Liaison Officer of the APRM to the AUC.” Further, it should also be recorded that in addition to the decisions adopted during the 11th Extraordinary Session of the Assembly, there are other previous Assembly decisions that expanded the mandate of the APRM.
- d. Align the French text of paragraph 235, on the proposed amendment to Article 35 of the Charter for African Cultural Renaissance to the English text to reflect the fact that the proposed amendment is not substantial.
- e. The recommendation in paragraph 236 on the need for the Secretariat to find means to sponsor Member States' Experts to the Sessions of the STC was endorsed.

VI. CONSIDERATION OF THE DRAFT LEGAL INSTRUMENTS

i. Draft Treaty for the Establishment of the African Medicines Agency.

23. There was debate as to whether the title of the legal instrument should be 'Statute' or 'Treaty'. The arguments for changing the title to 'Statute' were as follows: the national ratification processes for treaties are much more complex; to achieve harmonization with the other legal instruments establishing specialized agencies, such as the Pan African Intellectual Property Organization which is established by Statute.

24. The Legal Counsel advised that harmonization and consistency would entail retaining the title of 'Treaty' for specialized agencies and 'Statute' for organs. The meeting decided to retain the title 'Treaty'.
25. The following proposals were made:
- a) on Article 16(1)(b), to have simultaneous representation of all the eight RECs because their presence and representation within the governing organs of the agency allow them to directly participate in the formulation of policies and determination of methods of implementation;
 - b) on Article 19(2), to reduce the term of the RECs representative from two to one year so as to ensure that the RECs do not have to wait for too long before being represented;
 - c) to expand the functions of AMA to include the power to ban the circulation of harmful medicines.
26. The Legal Counsel presented her considerations and clarifications on the proposals as follows:
- a) To have the RECs represented simultaneously would mean that RECs are in majority in the Board, which would not be recommendable;
 - b) the proposed treaty was extensively debated by the Experts and Ministers of the STC on Health, Population and Drug Control in line with their mandate, whereas the STC on Justice and Legal Affairs was responsible for legal issues.
27. Upon these clarifications, one (1) delegation suggested to add at least one (1) extra REC so that the representation would be on the span of eight (8) years. Another delegation objected to this because this matter had been extensively debated by the relevant STC and the number suggested would lead to dysfunctional board because the membership would be an even number.
28. Based on this, the Legal Counsel proposed to add two (2) RECs so that the total number of RECs on the board would be three (3). The delegation proposing the amendment, only and one other delegate agreed to this proposal.
29. The meeting decided to retain the provisions as they are on the basis that it was the mandate of the STC on Health, Population and Drug Control to decide on those issues and not for the STC on Justice and Legal Affairs.
30. As for the substantive proposals presented, the Legal Counsel assured the meeting that they would be reflected in the report. She also reminded the meeting that the issues may be raised by the Member States at the level of the Executive Council.

ii. Draft African Union Transitional Justice Policy

31. The meeting stressed the importance of the Policy and its potential role in resolving conflicts in Africa and recommended its adoption as a matter of urgency.
32. The meeting adopted the Draft Policy without amendments.

iii. Draft Rules of Procedure of the Specialized Technical Committee on

Finance, Monetary Affairs, Economic Planning and Integration

33. The meeting adopted the Draft Rules of Procedure without amendments.

iv. Draft Statute of the African Union Audio Visual and Cinema Commission

34. One (1) delegation suggested to add more RECs to the board, similar to the proposal made under AMA. This proposal was not supported.
35. The meeting adopted the Draft Statute without amendments.

v. Draft Statutes of the African Union International Centre for Girls' and Women's Education in Africa (AU/CIEFFA)

36. The Legal Counsel Clarified that the title would be amended to read "Statute" and not "Statutes."
37. The meeting adopted the Draft Statute with the above amendment.

vi. Consideration of the Draft Amendment to Article 35 of the Charter for African Cultural Renaissance

38. The meeting adopted the proposed without amendments.

vii. Draft Proposed Amendment to Article 5(1) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights

39. The Rapporteur of the Experts' Session presented a summary of the discussions during the Experts' Session, including the request made by the Ministers during the Third Ordinary Session of the STC, for an independent study on the implications of this amendment. She then highlighted three main issues as follows:
- i. who should author the report;
 - ii. whether the Report prepared by the ACERWC could be considered as the independent study requested by the Ministers;
 - iii. whether this study comprehensively addressed all the legal implications of the proposed amendment.
40. Views were expressed to the effect that to allow the ACERWC to have direct access to the court was not advisable on the following reasons: it would taint its relationship with the Member States, as well as the relationship between

states and their citizens. Further, it would be subject to abuse, and create a bad precedent that would allow other committees to claim the same right. Finally there were views that the ACERWC could access the court as *amicus curiae* if they so wish.

41. Finally the meeting agreed to a proposal to request the African Union Commission on International Law (AUCIL) to undertake the study, due to its mandate.
42. The Legal Counsel clarified that the AUCIL is an organ under the Executive Council, therefore the Ministerial STC shall refer the matter to the Executive Council to recommend it to forward the request to AUCIL to undertake the study.

VII. ADOPTION OF THE DRAFT LEGAL INSTRUMENTS AND THE DRAFT REPORT

43. The following Draft Legal Instruments were adopted and recommended to the Executive Council for consideration at its Session in February 2019, which will be held in Addis Ababa, Ethiopia:

- a) *Draft Treaty for the Establishment of the African Medicines Agency;*
- b) *Draft African Union Transitional Justice Policy;*
- c) *Draft Rules of Procedure of the Specialized Technical Committee on Finance, Monetary Affairs, Economic Planning and Integration;*
- d) *Draft Statute of the African Audio Visual and Cinema Commission;*
- e) *Draft Statutes of the African Union International Centre for Girls' and Women's Education in Africa (AU/CIEFFA);*
- f) *Consideration of the Draft Amendment to Article 35 of the Charter for African Cultural Renaissance;*

44. Draft Proposed Amendment to Article 5(1) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights was also referred to the Executive Council. The recommendation is for the Executive Council to request the AUCIL to conduct a study on the implications of the proposed amendment. (Paragraphs 42 – 43 of the Report)

45. The meeting adopted its Report subject to the incorporation of proposed amendments.

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VIII. ANY OTHER BUSINESS

46. In order to improve the efficiency of the Sessions, a proposal was made to circulate the working documents in advance and to give a deadline within which delegates could submit their comments and proposals on the documents.

IX. CLOSING CEREMONY

47. In his closing remarks, Hon. Lebohang Hlaele, Chairperson of the STC thanked all the Ministers and Delegates for their wholesome dedication and commitment in achieving the mission and thereby considering the seven (7) draft legal instruments on the agenda.
48. He expressed his hope that the accomplishment of the day would have a tremendous impact in the development of the continent as well as to the progressive development of international law in the African context.
49. Hon. Hlaele thanked the interpreters, translators and technicians for their support and for their patience and cooperation in ensuring that the task becomes relatively easy and meaningful whilst considering and subsequently adopting the draft legal instruments.
50. He concluded by declaring the 4th Ordinary Session of the STC on Justice and Legal Affairs officially closed, wished all Ministers and delegates safe journey to their respective destinations and thanked God for guiding and protecting the meeting throughout the deliberations.

2019-02-07

Report of the 4th Ordinary Session of the STC on Justice and Legal Affairs, 23-30 November 2018, Addis Ababa, Ethiopia

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